IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI.W.P.NO.2311 OF 2005

Pramod Tukaram Pawar]
an Indian Inhabitant,]
residing at B.D.D.Chawl]
No.4(A), S.S.Wagh Marg,]
Naigaon, Mumbai-4000014]..Petitioner

Vs.

1. The State of Maharashtra]
Through the Secretary to]
the Govt. of Maharashtra]
Home Department,]
Mantralaya, Mumbai-400032]
]
2. Ranjana Sinha]
The Principal Secretary]
(Preventive Detention)]
to the Government of]
Maharashtra, Home Dept.]
and Detaining Authority]
Mantralaya, Mumbai-]
400032]
]
3. The Superintendent of]
Prison, The Mumbai]
Central Prison,]
Arthur Road, Mumbai]
]
4. The Superintendent of]
Prison, Nasik Road]
Central Prison, Nasik]..Respondent

....

Mr.Maqsood Khan, Advocate for Petitioner
Mr.D.S.Mhaispurkar A.P.P. for State

....

CORAM: D.G.DESHPANDE AND SMT.V.K.TAHILRAMANI,JJ.

DATE : MAY 4,2006

ORAL JUDGMENT (PER SMT.V.K.TAHILRAMANI,J.):

1. Through this petition, the petitioner has impugned the order of detention dated 13th March, 2002 passed by Respondent No.2 against the detenu i.e. Parvez Mazhar Hasan @ Parvez Hasan Shaikh. By the said order, the detenu came to be detained under Section 3(1) of the COFEPOSA Act, 1974.

2. We have heard Mr.Maqsood Khan, the learned counsel for the petitioner and Mr.D.S.Mhaispurkar, the learned A.P.P. for the State. Although, in this writ petition, many grounds have been pleaded, Mr.Maqsood Khan has pressed only one ground before us i.e. ground No.(vi). The said ground briefly stated is that "the petitioner had preferred a representation dated 8.7.2005 and it was incumbent on the part of the authorities to dispose of the said representation expeditiously". The said ground has been replied in para no.6 of the

affidavit dated 28th December, 2005 by Mr.Borade, the Secretary to the Government of Maharashtra, Home Department. In the said affidavit, it is stated that representation dated 8.7.2005 was received on 4.8.2005. Parawise comments on the said representation were called from the sponsoring authority on the same day and it was received on 11.8.2005 late in the evening. Thereafter, concerned Assistant prepared detailed note on 29.8.2005. It is further stated that there were seven days holidays during the said period.

3. Mr.Maqsood Khan has contended that this period from 11.8.2005 to 29.8.2005 i.e. 19 days was unexplained. Even excluding the period of seven days which were holidays, about 12 days remained to be explained.

4. In reply thereto, Mr.D.S.Mhaispurkar, the learned A.P.P. has stated that further details have been furnished in relation to delay between 11.8.2005 to 29.8.2005 in the affidavit by Mr. Sharad Pawaskar, Under Secretary to the Home Department. We have perused the said affidavit. In the said affidavit, it is stated that on account

of unprecedented rains in Mumbai on 26.7.2005 onwards the concerned Assistant could not attend the office till 17.8.2005 on account of disruption of train services and other difficulties on account of unprecedented rains. As far as period from 11.8.2005 to 17.8.2005 is concerned, we find that the said period would have to be excluded from consideration as the delay caused during this period was not on account of any negligence or callous inaction. There were unprecedented rains and the situation in the city was seriously disturbed during that period. Hence, the period from 11.8.2005 to 17.8.2005 would have to be excluded.

5. So far as the delay in disposal of the representation, no hard and fast rule as to measure all reasonable time can be laid down and each case has to be considered on the basis of facts presented in the said case. Only when the delay is caused due to negligence or callous inaction, avoidable red-tapism, wanton laches, it would warrant interference. The Supreme Court in the case of **Abdul Salam alias Thiyyan Vs. Union of India and others** reported in **AIR 1990 SC 1446**, has

observed as above. Thus, as far as the period from 11.8.2005 to 17.8.2005 is concerned, we find no negligence or callous inaction or wanton laches on the part of any of the persons dealing with the representation. Hence, we are not inclined to take that period into consideration while computing the delay caused in disposing of the representation.

6. As far as the period from 18.8.2005 to 29.8.2005 is concerned, Mr.Mhaispurkar has relied upon an affidavit of Mr.Pawaskar affirmed on 21.4.2006. Even after considering the said affidavit, we find that there is unexplained delay of seven days in considering the representation. In the case of **Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India and Ors.** reported in **AIR 1989 SC 1403,** the Supreme court held that detention of the detenu was illegal on the ground of unexplained delay of seven days in the process of disposal of the representation of the detenu. In the present case also, we find that there is a delay of seven days which has remained unexplained. In this view of the matter, we are of the opinion that the delay has resulted in rendering the continued detention illegal. Hence, detenu be set at liberty forthwith. Writ petition is disposed of.

[D.G.DESHPANDE, J.]

[SMT.V.K.TAHILRAMANI,J.]